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In the Supreme Court of the United States

October Term 1941

No. 205

A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

Petitioner's Reply to Brief for Respondent in Opposition to Petition for Writ of Certiorari

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July 30, 1941.

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Respondent does not defend the refusal of the Circuit Court of Appeals to consider whether the payments involved were made in discharge of an obligation under California law, but argues by innuendo that this refusal made no difference because there was no obligation under California law, and hence that the payments were not made in discharge of any obligation. Respondent admits the pertinence of state law in this case by saying, "It is

unquestioned that the existence of an obligation to support the children is to be determined by state law." (Resp. Br., 4) This seems to concede that the decision of the Circuit Court of Appeals is erroneous, because that court refused to consider whether an obligation exists under state law and held that state law is "immaterial". (R., Vol. 1, 120)

Without endeavoring to support the basis of the decision of the Circuit Court of Appeals, namely, that California law is immaterial, respondent seeks to justify the result reached by that court upon the different ground that there was no obligation under California law. On this ground the record is against respondent because the Board of Tax Appeals and the dissenting judge below expressly held that there was an obligation under California law. The other two judges below refused to consider the question. Under the California statutes the incompetent's daughters are entitled as a matter of right to support from their mother's estate. (Pet. Br., 16-17) The orders of the probate court were responsive to the requirements of the statutes. (Pet. Br., 18) Respondent cites no authority which questions the existence of an obligation under California law. His suggestion that the orders of the probate court used the discretionary terminology of California Probate Code Section 1558 rather than the words of California Civil Code Section 206 (Resp. Br., 4, 5) overlooks the fact that Section 1558 was not adopted until after the orders here involved were made and the further fact that the orders were couched in the language of Probate Code Section 1502, which was in force at all times material. (R., Vol. I, 65-72; Pet. App. ii) Additionally, it is stipulated

that the probate court refused to make any allowances under Section 1558 until 1937 (R., Vol. I, 55-57), and the allowances then made are not involved. (Pet. Br., 17)

Respondent's final suggestion (Resp. Br., 5) is that the $5,000 exclusion permitted in Section 504(b) of the Revenue Act of 1932 was designed by Congress to cover payments of the kind here involved. This suggestion begs the question because the exclusion referred to is an exclusion of *gifts* to the extent of $5,000 to each donee. If the payments here involved were gifts, they are taxable except to the extent excluded. But if they were in discharge of an obligation of support, they were not gifts and are not taxable, irrespective of the exclusion permitted. We think respondent cannot seriously contend that because of the permitted exclusion payments in discharge of an obligation are tax-free only to the extent of $5,000 to each obligee.

Respondent's argument, suggesting that the payments here involved were gifts because not obligatory under California law, appears to concede the adequacy of the grounds for certiorari as set forth in the petition. Respondent assumes (Resp. Br., 4), as we do, that payments made in discharge of an obligation imposed by state law are not gifts. The only remaining question is whether there was an obligation under state law, and in this respect the operation of the federal tax statute is dependent upon state law. The Circuit Court of Appeals refused to consider that question although in that regard the other five judges of the same court would appear to disagree with the two judges who decided this case. (Pet., 9-11; Pet. Br., 22-26) An obligation against the incompetent's

estate existed and was enforced and measured by the California probate court. The determinations of that court are conclusive under the principle of *Blair v. Commissioner,* 300 U. S. 5, and *Freuler v. Helvering,* 291 U. S. 35.

Respectfully submitted,

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San Francisco, California, July 30, 1941.